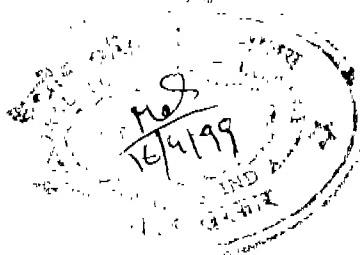




आरत का राजपत्र

The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 23rd December, 1998.

I

BILL No. XLVI OF 1998

A Bill to make the carriers liable in respect of passengers brought by them into India in contravention of the provisions of the Passport (Entry into India) Act, 1920 and the rules made thereunder and matters connected therewith.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Immigration (Carriers' Liability) Act, 1998.

Short title and extent.

(2) It extends to the whole of India.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "carrier" means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom the aircraft or the ship is owned or chartered;

(b) "Competent Authority" means the civil authority appointed under subparagraph (2) of paragraph 2 of the Foreigners Order, 1948 made under the Foreigners Act, 1946 or any other officer notified by the Central Government in this behalf;

(c) "prescribed" means prescribed by rules made under this Act.

(2) Words and expressions not defined in this Act but defined in the Foreigners Act, 1946 or the Passport (Entry into India) Act, 1920 shall have the meanings respectively assigned to them in those Acts.

31 of 1946.
34 of 1920.

Liability of carriers for passengers brought into India.

3. Where the Competent Authority is of the opinion that any carrier has brought a person in contravention of the provisions of the Passport (Entry into India) Act, 1920 and rules made thereunder into India, he may by order impose a penalty of rupees one lakh on such carrier:

34 of 1920.

Provided that no order shall be passed without giving the carrier an opportunity of being heard in the matter.

Appeals.

4. (1) An appeal shall lie against the order made under section 3 of this Act to the Joint Secretary to the Government of India in the Ministry of Home Affairs authorised in this behalf by that Government.

(2) Every such appeal shall be preferred within thirty days from the date of the order appealed against:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of thirty days, permit the appellant to prefer the appeal within a further period of thirty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the order appealed against.

(4) Every appeal shall be preferred on payment of such fees as may be prescribed.

Recovery of penalty due to Government.

5. Where any penalty imposed under this Act is not paid, the Competent Authority may recover the penalty so payable by seizing, detaining or selling—

(a) the aircraft or the ship; or

(b) any goods on the ship or aircraft, belonging to the carrier.

Bar of legal proceedings.

6. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Competent Authority or any officer of the Central Government or any other person exercising any powers or discharging any functions or performing any duty under this Act for anything in good faith done or intended to be done under this Act or any rule made thereunder.

Application of Acts 16 of 1939, 34 of 1920 and 31 of 1946 not barred.

7. The provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 or the rules or orders made thereunder.

Power to make rules.

8. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the fees which shall be paid for appeals under sub-section (4) of section 4;

(b) any other matter which is required to be, or may be, prescribed.

9. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules to be laid
before
Parliament.

10. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of two years from the commencement of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920, *inter alia*, provides that no person proceeding from any place outside India shall enter, or attempt to enter, India by water, land or air unless such person is in possession of valid passport confirming to the conditions provided in rule 5 of the said rules. In recent years, it has come to the notice of the Central Government that large number of passengers come to India without any valid travel document. It has also been observed that airlines do not exercise proper check of the travel documents of the foreigners coming to India at the time of commencement of the journey. This results in arrival of passengers in contravention of the provisions of the Passport (Entry into India) Act, 1920 and the rules made thereunder which causes not only harassment to the passengers but also unnecessary burden on the Government which can be easily avoided. In order to tackle this problem, it has become necessary to impose a statutory obligation on the carriers to properly scrutinise travel documents of the persons before bringing them to India. It is proposed to impose a penalty of Rs. 1 lakh per person on the carrier who fails to perform the statutory obligation imposed on it under the proposed legislation. Further, the power to impose penalty is proposed to be given to the concerned Civil Authority appointed under the Foreigners Order, 1948 made under the Foreigners Act, 1946 or any other officer notified by the Central Government. An appeal against the order of the Civil Authority or any other officer notified shall lie to the Joint Secretary in the Ministry of Home Affairs responsible for dealing with the foreigners. In the event of failure to pay the penalty, the amount will be recovered by seizing, detaining or selling the aircraft or ship, or any goods on the ship or aircraft belonging to the carrier.

2. The Bill seeks to achieve the aforesaid object.

L.K. ADVANI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (4) of clause 4 of the Bill empowers the Central Government to prescribe fee on payment of which an appeal may be preferred.

2. The matter in respect of which rules are to be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, normal in character.

II

BILL NO. XLV OF 1998

A Bill further to amend the Forward Contracts (Regulation) Act, 1952.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

- | | | |
|-------------|--|--------------------------|
| 74 of 1952. | 1. This Act may be called the Forward Contracts (Regulation) Amendment Act, 1998. | Short title. |
| | 2. In the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the principal Act), in the long title, for the words “, the prohibition of options in goods”, the words “and of options in goods” shall be substituted. | Amendment of long title. |

Amendment of
section 2

3. In section 2 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “broker” means a person who trades or clears contracts on behalf of a client, whether or not the client is a member of a recognised association or a registered association and who has been granted a certificate of registration under section 14;’;

(b) after clause (c), the following clause shall be inserted, namely:—

‘(cc) “futures contract” means a forward contract and which is not a specific delivery contract;’;

(c) in clause (f), the following proviso shall be inserted at the end, namely:—

“Provided that where any such contract is performed either wholly or in part—

(1) by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(2) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price thereof is dispensed with,

then, such contract shall not be deemed to be a non-transferable specific delivery contract”;

(d) in clause (i),—

(i) for the word “eleven”, the word “thirty” shall be substituted;

(ii) in the *Explanation*, in paragraph (i), the words, figures and brackets “or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980” shall be inserted at the end;

40 of 1980.

(e) in clause (m), for the words “forward contract which provides for”, the words “forward contract which provides for and is performed by” shall be substituted.

4. In section 3 of the principal Act, in sub-section (2), for the word “four”, the word “seven” shall be substituted.

5. In the principal Act,—

(a) in sections 5, 6, 11, 12A, 12B and 21, for the expression “forward contracts” the expression “forward contracts and option in goods” shall be substituted;

(b) in section 20, in clause (a), in sub-clause (iii) and in clause (c), for the expression “forward contracts”, the expression “forward contracts and option in goods” shall be substituted.

Amendment of
section 3.

Amendment of
sections 5, 6, 11,
12A, 12B, 20 and
21.

Amendment of
section 14A.

6. In section 14A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) On and from the date of the commencement of the Forward Contracts (Regulation) Amendment Act, 1998, any association desirous of entering into business relating to option in goods may—

(a) make an application for a certificate of registration for entering into business relating to option in goods and the provisions of sub-section (2) shall apply as they apply in respect of an association concerned with the regulation and control of business relating to forward contracts;

(b) apply for the modification of certificate of registration granted to it under section 14B so as to enable it to get itself registered for entering into business relating to option in goods also.”.

7. After Chapter IIIA of the principal Act, the following Chapter shall be inserted, namely:—

In insertion of new Chapter IIIB

"CHAPTER IIIB

REGISTERED BROKER

14D. (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Act, 1998, no person intending to act as a broker shall enter into, make, perform, rescind or terminate any specific delivery contract, futures contract or option in goods except under, and in accordance with, the conditions of a certificate of registration granted by the Commission under this Act.

Registration of brokers

(2) A person who, in his capacity as a broker, intends to commence the business of entering into, making, performing, rescinding or terminating any specific delivery contract, futures contract or option in goods shall make application for a certificate of registration to the Commission in such form and containing such particulars as may be prescribed:

Provided that a person who was acting as a broker immediately before the commencement of the Forward Contracts (Regulation) Amendment Act, 1998 may continue to do so for a period of three months from the date of such commencement and if he has made an application for registration within the said period of three months, till the disposal of such application whichever is later.

(3) On receipt of an application under sub-section (2), the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration on such terms and conditions as may be prescribed or refuse to grant it:

Provided that before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14E. The Commission may, by order, suspend or cancel certificate of registration in such manner as may be prescribed:

Cancellation of certificate of registration.

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter."

8. In section 15 of the principal Act, in sub-section (1), for the words "between members of a recognised association or through or with any such member", the words "between members of a recognised association or through or with any such member or through a registered broker" shall be substituted.

Amendment of section 15.

9. For section 19 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 19.

"**19.** (1) Any option in goods which has been entered into on or after the commencement of the Forward Contracts, (Regulation) Amendment Act, 1998, shall be illegal unless it complies with the requirements laid down in sub-sections (2) and (3).

Regulation of option in goods.

(2) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class or classes of goods and in such areas as may be specified in the notification, and thereupon, every option in goods for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of an association or through or with any member or through a registered broker shall be illegal.

(3) The provisions of sub-sections (2), (3), (3A) and (4) of section 15 shall apply to option in goods as they apply in relation to a forward contract.

(4) Where a notification has been issued under sub-section (2), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all contracts in option in goods for the sale or purchase of any goods specified in the notification entered into on or before the date of notification and remaining to be performed after the said date as they apply to all contracts for option in goods for the sale or purchase of any goods specified in the notification under sub-section (2).".

Amendment of
section 20.

10. In section 20 of the principal Act,—

(a) after clause (d), the following clause shall be inserted, namely:—

"(dd) fails to make or accept delivery of goods covered by non-transferable specific delivery contracts or by transferable specific delivery contracts where rights and obligations have not been transferred, as the case may be; or";

(b) after clause (e), in clauses (i) and (ii), for the words "one thousand", the words "five thousand" shall be substituted.

Amendment of
section 21.

11. In section 21 of the principal Act, in clause (h), in sub-clauses (i) and (ii), for the words "one thousand", the words "five thousand" shall be substituted.

Amendment of
section 28.

12. In section 28 of the principal Act, in sub-section (2), after clause (cc), the following clauses shall be inserted, namely:—

"(ccc) the form in which and the terms and conditions subject to which applications for certificates of registration may be made under section 14D and the levy of fees in support of such application;

(cccd) the terms and conditions subject to which registration may be granted under sub-section (3) of section 14D;

(cce) the manner in which the certificate of registration may be suspended or cancelled under section 14E;".

STATEMENT OF OBJECTS AND REASONS

With the commencement of the process of economic liberalisation in the Indian economy, the Government have been expanding the scope of futures trading in India. In that direction, the Government had constituted a Committee in June, 1993 under the Chairmanship of Prof. K. N. Kabra, Professor of Indian Institute of Public Administration to review the operations of forward markets and to assess the role of the Forward Markets Commission. The Committee, in its report submitted in September, 1994, had made several recommendations which, *inter alia*, include proposals for amendments to the Forward Contracts (Regulation) Act, 1952 in order to strengthen the Forward Markets Commission as also arrangements for trading.

2. Based on the recommendations of the Committee and taking into account the experience in the administration of the Act and present requirements, it is proposed to amend the Forward Contracts (Regulation) Act, 1952 in respect of the following:—

(i) definition of specific delivery contracts and non-transferable specific delivery contracts is proposed to be modified so as to make delivery of goods compulsory and to make performance of such contracts by any means, other than delivery, punishable;

(ii) enhancement in the quantum of fine from Rs. 1,000 to Rs. 5,000;

(iii) to recognise the dealings through brokers in addition to the members of the commodity exchange. For this, it is proposed to have a definition of "broker" and a substantive provision recognising only registered broker as a person eligible to trade in commodity exchange in addition to the members of the exchange;

(iv) to increase the period of delivery of goods and payment under ready delivery contracts from eleven days to thirty days;

(v) to provide for a definition of futures contract as there is no definition of futures contract in the Act at present;

(vi) to remove prohibition on option in goods under section 19 and to provide for its regulation;

(vii) to increase the maximum number of members of the Forward Markets Commission from four to seven.

3. The Bill seeks to achieve the above objectives.

SURJEET SINGH BARNALA.

FINANCIAL MEMORANDUM

Section 3 of the Forward Contracts (Regulation) Act, 1952 provides for the establishment and constitution of the Forward Markets Commission. The maximum number of members of the Commission shall not exceed four and the minimum number of member shall not be less than two. At present there are only two members of whom one is designated as Chairman. The Chairman is of the rank of the Joint Secretary to the Government of India and the member is of the rank of Director to the Government of India.

2. In view of the expansion of futures trading it has been proposed vide clause 4 of the Bill to increase the maximum number of members from four to seven. The object is to appoint four full time members and three part time members from the Ministries of Law, Finance, Consumer Affairs, representatives of trade and experts known for their practical knowledge of futures trading. It has been further decided to upgrade the post of Chairman from the present level of Joint Secretary to the Government of India to that of Additional Secretary to the Government of India and of member from the present level of Director to that of a Joint Secretary to the Government of India.

3. Since presently only two full time members including the Chairman are being appointed the annual expenditure on account of the two additional full time members will be approximately Rs. 6 lakhs. Besides this, there will be supporting staff and other incidental expenditure.

4. There will be no other recurring and non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 enlarges the rule-making power of the Central Government and empowers it to make rules regarding the manner in which applications for certificate of registration may be made under section 14D and levy of fees in respect of such application and the terms and conditions subject to which the certificate of registration may be granted under that section. Section 14E empowers the Central Government to make rules regarding the manner in which certificate of registration may be suspended or cancelled.

2. The matter in respect of which rules are to be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative procedure is, therefore, normal in character.

R.C. TRIPATHI,
Secretary-General.

